

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

RAY ACUNA,

§

Plaintiff,

§

v.

§

UTMB TDCJ MANAGED CARE,

§

Defendants.

§

CIVIL ACTION NO. 5:21-CV-00014-RWS

**ORDER**

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 32), which contains her findings, conclusions and recommendations for the disposition of this matter. Plaintiff Ray Acuna, proceeding *pro se*, filed the above-captioned civil action complaining of alleged violations of his constitutional rights. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. The Court hereby adopts the Report and Recommendation of the Magistrate Judge (Docket No. 32) as the findings and conclusions of this Court.

Plaintiff's complaint alleges that he was denied adequate medical care after suffering an injury when he was improperly loaded into a wheelchair van backwards, without restraints or seat belts, and he was flipped out of his chair onto the floor when the van driver slammed on the brakes. Docket No. 1 at 4. The Magistrate Judge ordered prison officials to furnish a *Martinez* Report containing Plaintiff's medical records. *See Martinez v. Aaron*, 570 F.2d 317, 319 (10th Cir. 1978); *Parker v. Carpenter*, 978 F.2d 190, 191-92 n.2 (5th Cir. 1992). Docket No. 15. Plaintiff was served with a copy of the *Martinez* Report and thereby given an opportunity to file a response, but he did not do so. Docket No. 16 at 3.

After review of the pleadings and the *Martinez* Report, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed with prejudice as frivolous for purposes of proceeding *in forma pauperis*. See *Tijerina v. Stanley*, 804 F.App'x 277, 2020 WL 2374834 (5th Cir., May 11, 2020). Docket No. 32. A copy of the Report and Recommendation was mailed to the Plaintiff. Plaintiff acknowledged receipt of the Report and Recommendation on January 28, 2022. Docket No. 33. Plaintiff was granted an extension of time, through May 2, 2022, to file objections to the Report and Recommendation. Docket No. 37. To date, no objections have been filed.

Plaintiff is, therefore, barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions and recommendations; and, except upon grounds of plain error, Plaintiff is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. See *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"), *cert. denied*, 492 U.S. 918 (1989). Accordingly, it is

**ORDERED** that the Report of the Magistrate Judge (Docket No. 32) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that Plaintiff's above-titled cause of action is **DISMISSED WITH PREJUDICE** as frivolous for purposes of proceeding *in forma pauperis*. It is further

**ORDERED** that any and all motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

**So ORDERED and SIGNED this 16th day of June, 2022.**



ROBERT W. SCHROEDER III

UNITED STATES DISTRICT JUDGE